

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**WILLIAMSON DISTRIBUTORS, INC.,

Respondent.**

**Docket No. FMCSA-2009-0042¹
(Southern Service Center)**

ORDER APPOINTING ADMINISTRATIVE LAW JUDGE

1. Background

On September 16, 2008, Claimant, the Field Administrator for the Southern Service Center, Federal Motor Carrier Safety Administration (FMCSA), issued a Notice of Claim to Respondent, Williamson Distributors, Inc., proposing a civil penalty of \$44,000 for four alleged violations of the Federal Motor Carrier Safety Regulations (FMCSRs). Specifically, the Notice of Claim, which was based on an August 6, 2008, compliance review (CR), charged Respondent with four violations of 49 CFR 396.7(a), with a proposed civil penalty of \$11,000 per count, for operating a motor vehicle in such a condition as to likely cause an accident or breakdown.² The Notice of Claim indicated that the maximum civil penalty was being assessed in accordance with section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA).³

On October 1, 2008, Respondent replied to the Notice of Claim, denying each of

¹ The prior case number of this matter was NC-2008-0059-US0123.

² See Government Exhibit A to Notice of Filing Respondent's Request for Binding Arbitration (Claimant's Notice of Filing).

³ *Id.*

the charges and requesting binding arbitration of the civil penalty.⁴ On February 5, 2009, Claimant agreed to submit the matter to binding arbitration. The request is denied.

2. Discussion

In accordance with FMCSA's published guidance, the binding arbitration process is used in cases in which the only remaining issues to be resolved are the amount of the civil penalty and the length of time in which to pay it. The guidance further states that FMCSA will not agree to arbitrate maximum civil penalty cases under section 222 of MCSIA.⁵ Binding arbitration would be appropriate only if Respondent had admitted the violations⁶ and the civil penalty had not been calculated in accordance with section 222 of MCSIA. Here, Respondent denied the allegations and the maximum civil penalty was proposed under section 222 of MCSIA. Accordingly, the request for binding arbitration is denied. Because we are not able to resolve this case based upon the current written record, this matter is being assigned to the Office of Hearings of the United States Department of Transportation.⁷

3. Appointment of Administrative Law Judge

An administrative law judge is hereby appointed, to be designated by the Chief Administrative Law Judge of the Department of Transportation, to preside over this matter in accordance with 49 CFR 386.54, and render a decision on all issues, including

⁴ See Government Exhibit B to Claimant's Notice of Filing.

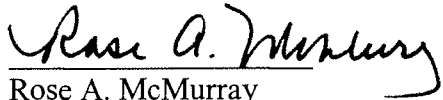
⁵ See *Guidance for the Use of Binding Arbitration under the Administrative Dispute Resolution Act of 1996*, Docket No. FMCSA-2003-14794, 69 Fed. Reg. 10288, March 4, 2004.

⁶ See 49 CFR 386.14(b)(3): "[R]eferral to binding arbitration is contingent upon an admission of liability that the violations occurred."

⁷ Even though Respondent did not request a formal hearing, 49 CFR 386.16(b)(4)(C) provides in pertinent part: "Nothing in this section shall limit the Assistant Administrator's authority to refer any matter for formal hearing...."

the civil penalty, if any, to be imposed. The proceeding shall be governed by subparts D and E of 49 CFR Part 386 of the Rules of Practice and all orders issued by the administrative law judge.

It Is So Ordered.



Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

7-6-09
Date

CERTIFICATE OF SERVICE

This is to certify that on this 9 day of July, 2009, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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The Honorable Ronnie A. Yoder
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